

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JOSEPH G. BULLER,)	
)	
Charging Party,)	Case No. LA-CE-1937
)	
v.)	PERB Decision No. 514
)	
LOS ANGELES UNIFIED SCHOOL)	July 1, 1985
DISTRICT,)	
)	
Respondent.)	

Appearances; Joseph G. Buller, on his own behalf; O'Melveny and Myers by Polly Brophy for Los Angeles Unified School District.

Before Hesse, Chairperson; Jaeger, Morgenstern and Porter, Members.

INTRODUCTION

HESSE, Chairperson: This case is an appeal to the Public Employment Relations Board (PERB) of an administrative law judge's (ALJ) dismissal of charging party's unfair practice complaint against the Los Angeles Unified School District (District). A motion to dismiss was made by the District at the conclusion of charging party's testimony. The motion was granted by the ALJ at the hearing, and was then confirmed in a proposed decision issued December 31, 1984.

On appeal, charging party alleges that the motion to dismiss should not have been granted. Specifically, he objects to PERB's requirement that the charging party needed to show not only that he engaged in protected activity but also that an

adverse personnel action was motivated by that protected activity. Charging party also alleges that he was denied due process when his witness was not allowed to testify, when he was not permitted to call adverse witnesses from the District because he had not been told of the need to subpoena them, and when evidence of his informal conference was admitted by the ALJ at the formal hearing.

DISCUSSION

We have reviewed the findings of fact set forth in the proposed decision (attached hereto) and find them free from error. Accordingly, we adopt those factual findings as our own.

Furthermore, we adopt the ALJ's conclusions of law, consistent with the following discussion.

The ALJ reviewed the evidence presented at the hearing and, applying the Board's decision in Novato Unified School District (1982) PERB Decision No. 210, concluded that Buller failed to establish that the Notice of Unsatisfactory Performance and the transfer were issued by the District because of Buller's protected activities. The ALJ found, and we agree, that most of the events Buller described bore no relevance to the allegations charged. We also agree that, while certain events suggested a negative "attitude" toward UTLA by the site administrator, these events appear as isolated incidents which, without more, are insufficient to support a conclusion that the District would not have acted as it did but for Buller's involvement in UTLA. In so holding, we note that an employer

may harbor adverse feelings toward an employee organization so long as it refrains from taking action against any employee because of the exercise of rights guaranteed by the Educational Employment Relations Act (EERA). Here, while the events described may demonstrate anti-union feelings, Buller failed to link this sentiment to the personnel action taken or, indeed, to any actions of the employer.

We also reject charging party's contention that the ALJ improperly refused to permit Buller's witnesses to testify on his behalf. Based on Buller's representations, we find that the testimony he sought to introduce was cumulative and merely would have supported the charging party's version of the events he described. The ALJ did not dismiss the charge because he disbelieved Buller; however, but because Buller's testimony, even if fully supported, did not allege clear violations of EERA. Thus, we find that the charge was properly dismissed for failure to state a prima facie case.¹¹

Finally, we note that the ALJ did not admit into evidence anything learned from an informal settlement conference. The settlement conference was referred to only in the context of an

••Our dissenting colleague would remand to the General Counsel, presumably for further testimony. We decline to remand because the charging party was afforded two days of hearing but still could produce no evidence other than the recitation of events set forth on pages 5-13 of the Proposed Decision.

earlier motion to dismiss made by the District. As that motion was denied, and as those discussions on the record were not admitted to show the truth of statements made in settlement discussions, there is no basis to overrule the ALJ's decision.

ORDER

For the reasons set forth above, and for the reasons set forth in the proposed decision attached hereto, unfair practice charge number LA-CE-1937 is hereby DISMISSED.

Members Morgenstern and Porter joined in this Decision. Member Jaeger's dissent begins on page 5.

Jaeger, Member, dissenting: In view of certain ambiguities or inconsistencies in the ALJ's treatment of the issues, I am unable to join the majority.

The ALJ found that charging party had provided evidence of four instances of probable animus towards him based on his participation in protected activity. However, according to the ALJ, each instance was too "insignificant" or "without sufficient weight" to establish unlawful motive. If the ALJ intended to say that there was no proof that those instances were related to the District's adverse action, he failed to make that point. Rather, he appears to have established an additional "test" to those set forth in Novato Unified School District,¹ one based on the ALJ's own view of the importance of demonstrated unlawful conduct.²

Under the Novato test, a charging party has the burden of proving that the employer knew of his or her participation in protected activity, and that its adverse action was motivated in whole or in part by that participation. It is evidence of the presence of animus, not the depth or intensity of that attitude, that satisfies the charging party's burden.

¹Novato Unified School District (1982) PERB Decision No. 210.

²

The "weightiness" of an employer's improper conduct may have a strong bearing on the ultimate balancing of such conduct and the legitimate justification for its adverse action, a function of the "but-for" test. So, too, may the cumulative effect of a series of relatively minor improprieties.

Because the ALJ reached this incorrect conclusion, he did not find it necessary to consider whether the demonstrated animus was a motivating factor in the District's adverse action. Although he continued to press the charging party for proof of "nexus," he failed to explain why that requirement had not been met.

Novato permits an inference of related unlawful motive to be drawn from such evidence as disparate treatment of the charging party, proximity of time between the participation in protected activity and the adverse action, inconsistent explanations of the employer's action, or departure from established procedures or standards. Here, charging party's testimony tends to demonstrate the existence of the first two of these conditions, and possibly the last. The ALJ considered none of these.

I also question the propriety of denying charging party the opportunity to call his only witness. That ruling was clearly based on the ALJ's view that charging party had not established a prima facie case by his own testimony. Even if that were so, it was not necessary that he do so. The case-in-chief is made or falls on the record as a whole. There is no rule that the burden rests entirely on the shoulders of any one witness, in this instance, the charging party.

I would reverse the dismissal and remand the matter to the General Counsel.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



JOSEPH G. BULLER,)	
)	Case No. LA-CE-1937
Charging Party,)	
)	
V.)	PROPOSED DECISION
)	(12/31/84)
LOS ANGELES UNIFIED SCHOOL DISTRICT)	
)	
Respondent.)	

Appearances; Joseph G. Buller, Charging Party in propria persona; Joel Grossman, Esq., O'Melveny and Myers, Attorneys at Law, for Respondent.

Before Allen R. Link, Administrative Law Judge.

PROCEDURAL HISTORY

On March 8, 1984, Joseph G. Buller (hereafter Charging Party or Buller) filed an unfair practice charge with the Public Employment Relations Board (hereafter PERB or Board) against the Los Angeles Unified School District (hereafter Respondent or District) alleging violations of Government Code section 3543 and 3543.5 of the Educational Employment Relations Act (hereafter EERA or Act) (commencing with section 3540 et. seq. of the Government Code).¹ On May 16, 1984, the

¹All section references, unless otherwise indicated, are to the Government Code.

This Board agent decision has been appealed to the Board itself and is not final. Only to the extent the Board itself adopts this decision and rationale may it be cited as precedent.

General Counsel for the Board issued both a Partial Dismissal of the Charge, as well as a Complaint against the District. On June 5, 1984, the District filed its Answer to the Complaint.

The District also filed a Motion to Dismiss on November 1, 1984. The Charging Party's argument or answer to that Motion to Dismiss was filed on November 7, 1984.

The parties met on three separate occasions in an informal conference in an attempt to settle the matter. The conferences did not settle the case. The formal hearing was held at the Los Angeles Regional Office on November 13 and 14, 1984. On the second day of the hearing, Respondent's Motion to Dismiss was granted and the hearing was terminated. The transcript was prepared and sent to the parties on December 11, 1984, and the case was submitted at that time.

JURISDICTION

The parties stipulated to the Charging Party being a public school employee during the events at issue in this case and the Respondent being a public school employer within the meaning of section 3540.1.

INTRODUCTION

Charging Party has been a teacher at the District for an extended period of time but has been teaching at the Jane Addams Continuation High School since February 1979. It is a three-teacher school. Mr. Buller was the United Teacher-Los Angeles (UTLA) Chapter chairman at that site. UTLA

is the exclusive representative for the teaching staff of the District. On September 12, 1983, Mr. Buller was given a Notice of Unsatisfactory Performance by the District. Soon after being issued the notice, Buller was transferred to Venice High School on September 20, 1983.

Mr. Buller alleges that the issuance of the Notice of Unsatisfactory Performance and the subsequent transfer were as a result of the District retaliating against him for his activities on behalf of UTLA at his work site.

MOTION TO DISMISS

The District, at the beginning of the formal hearing in this case, argued its November 1, 1984 Motion to Dismiss. Such motion was based on the ground that the District already offered to grant, unilaterally, without admitting any liability, the full remedy that Charging Party could obtain after a full hearing. During one of the informal conferences the District and Mr. Buller entered into a conditional settlement agreement. The District agreed to (1) rescind the Notice of Unsatisfactory Performance, and (2) transfer Mr. Buller, to one of six District schools closer to his residence than Venice High School. Mr. Buller selected Cleveland High School from the list provided by the District but insisted that prior to such Settlement Agreement becoming operative he would have to obtain a medical release to teach. Mr. Buller was not able to obtain from his psychotherapist,

such medical release so the Settlement Agreement was null and void.

Mr. Buller is presently on disability leave. Such leave is supported by letter from his psychotherapist which states, "Patient is permanently precluded from return to teaching for Los Angeles Unified School District". The letter was not admitted into evidence but was read and discussed during the formal hearing. Mr. Buller credibly testified that his original request was to be returned to the Jane Addams Continuation High School and that he chose Cleveland High School only because it was the most acceptable alternative if he was not able to return to Jane Addams.

When asked if there was any possibility of his being able to return to teaching at the Los Angeles Unified School District, Mr. Buller replied,

Of course, I wouldn't claim to speak for my psychiatrist . . . but I feel that if we would get that paper, if we would get the decision, that he might feel that then the working conditions would be such that I could go back to work at Jane Addams, continue

The District insisted that Mr. Buller's permanent disability negated the necessity to offer to return him to Jane Addams. From Mr. Buller's testimony regarding the permanence of his disability it is determined that there is a possibility he could return to teaching at the District at some time in the future and therefore, the "disability" does not negate the necessity of such an offer.

The Motion to Dismiss which was based on the District unilaterally offering the full quantum of remedy available to the Charging Party, was denied. It was determined that the remedy offered by the District contemplated a transfer to Cleveland High School. It is within the discretion of the judge in this case, if the evidence were to support a finding that the District violated the Act, to return Charging Party to Jane Addams Continuation High School. Mr. Buller's requested remedy was to return to Jane Addams. Therefore, the remedy offered by the District was not the full and complete remedy requested by the Charging Party.

FINDINGS OF FACT

Mr. Buller was a teacher at the Jane Addams Continuation High School, a school with a principal and three teachers. One of the teachers is appointed acting principal as an additional duty to his/her teaching responsibilities. The other teachers at the school were George Edgington and Kathryn Genson. Both Mr. Buller and Mr. Edgington were UTLA members and Ms. Genson was not, although all three were members of the bargaining unit represented by UTLA. Mr. Buller was the UTLA Chapter chairman at that school site.

Mr. Buller was sworn and had testified in a narrative fashion for approximately 1-1/2 hours when, in response to several objections to the relevance of the general direction of his testimony, he was directed by the undersigned to use the

15 minutes of the afternoon break to search through his notes and records and attempt to locate evidence that would support an inference that there was a nexus between his UTLA chairmanship and the discrimination that he had been experiencing. When he returned to the witness stand he gave several examples of such events, but stated that it was difficult to provide such information within the very short period of time available. After some discussion, the hearing was continued until the next morning at 9:30 a.m. Mr. Buller was directed to spend the intervening time with his records and to come back to the hearing the next day prepared to provide all of his very best examples of events that could be used to support an inference that there was a connection between his activities on behalf of UTLA and the actions that he felt showed the District was discriminating against him.

The next morning Mr. Buller testified as to those events that he felt supported the existence of a nexus. The events he related, both at that time, and during the preceding afternoon are as follows:

1. It is customary at district schools for the administration, at the end of the summer vacation, to send a "welcome back" letter to the teachers or to phone the teachers so they would know when and where they are to report back. Ms. Caruso did this to the nonunion member but did not do so to the two union members. In fact, Ms. Caruso arranged for the

nonunion teacher to attend both the district superintendent's general greeting to administrators meeting on August 27, 1982 and the September 1, 1982, secondary administrators' meeting.

2. On September 14, 1982, Ms. Caruso removed Mr. Edgington from being the acting principal of the school and appointed Ms. Genson to that position. When Mr. Buller told Ms. Caruso that he would have been willing to have been acting principal she said, "I never even thought of it." He entered into a dialogue with Ms. Caruso over a period of time encompassing a number of contacts wherein she told him that she did not feel that he had administrative qualifications. She offered to provide private instructions in administrative skills but never provided such instruction. She asked Mr. Buller to list the subjects upon which he wanted instruction. He felt that as she was presently holding the job she would have a better idea as to what subjects must be covered. His primary point was that Ms. Genson, the nonunion teacher, did not have to ask for and obtain private instructions to be appointed acting principal.

3. On December 1, 1982, George Edgington told Mr. Buller that he was going to try to get a UTLA representative to come to the Jane Addams campus to talk to them about forming a UTLA chapter.

On December 2, 1982, the Continuation Education Office sent Bonnie Bahny and Daryl Malm to the campus to help the teachers with their multi-faceted training contracts. Ms. Genson was in

New York on a personal vacation with her husband and did not have to complete the extra assignments assigned to Mr. Edgington and Mr. Buller by Ms. Bahny and Mr. Malm.

4. On March 14, 1983, Mr. Buller, with Mr. Edgington as a witness, requested in writing, Ms. Caruso to provide the teachers with (1) specified written instructions regarding classroom release policies, and (2) a clearer prioritization of all general assignments before any teacher is given any written material critical of performance. Mr. Buller had given Ms. Caruso only two other such requests over the school year. On the very next day, March 15, 1982, Dr. Calvin Burke, Ms. Caruso's immediate superior who is in charge of all of the 42 or 43 district continuation schools, came to the Jane Addams site and had an extremely abusive talk with Ms. Caruso, Mr. Buller and Mr. Edgington. Ms. Genson was on a personal vacation Caribbean cruise at the time. Dr. Burke stated that Buller and Edgington were not doing a good job. He made no reference to union activity nor did Mr. Buller know if Dr. Burke even knew of his UTLA chapter chairmanship. Mr. Buller testified that Dr. Burke probably visits each continuation school only once a year.

March 15, 1983, was the same day that a meeting, regarding Mr. Edgington's grievance that complained about the extra paper work occasioned by the multi-faceted contracts, was to be held. A UTLA representative, Will Mecheam, came to campus

to attend the grievance hearing which was scheduled for 1:30 p.m. At that exact same time, Ms. Caruso scheduled a meeting for Buller and Daryl Malm to discuss the multi-faceted student training contracts Mr. Buller had been assigned to do. Buller was unable to attend the grievance meeting.

Mr. Buller alleged that, in his opinion, union activity in the district's continuation schools is extremely weak and that Dr. Burke felt so strongly on this subject that he would personally want to come out and put down the union activity immediately. He (Burke) would then want to see that he (Buller) would receive a Notice of Unsatisfactory Performance and then would see to it that he would be transferred out of the continuation school. Buller cited the fact that all of these things were actually accomplished to justify his allegations.

5. In January 1983 some of the students had asked for the creation of a fifth period from noon to 1:00 p.m. During a student body meeting on January 21, 1983, Ms. Caruso stated, "There cannot be any 12:00 class because the teacher's union requires a duty-free lunch."

Mr. Buller spoke to Ms. Caruso in private and told her that the teachers at their school were very cooperative and that arrangements could have been made for a fifth period if it was really that important for the students. He told her that he thought it was in very bad taste for her to use the public forum of a student body meeting to make an anti-union statement.

6. On February 25, 1983, a day that Ms. Genson was going to be skiing at Mammoth, Ms. Caruso arranged for Daryl Malm to help Mr. Buller with his multi-faceted contracts. Malm kept Buller working until after his regular school hours. He should have been through working at 2:50 but was not able to leave until 3:20 p.m. On the previous day Mr. Buller had been assigned to do three homework counseling records and other clerical work that the office manager should have done. He was the only one required to do this extra work. Ms. Genson had been asked to help Mr. Buller with his student credit folders but she wrote Ms. Caruso a note stating that she was unable to help him because she had her own work to do.

7. On December 17, 1982, Dr. Calvin Burke came to the campus. Buller, as UTLA representative, told him, thinking that it would be confidential, that the office manager had been absent at least 27 times during the previous school year, 1981-82, and was continuing to be absent at about that same rate during the 1982-83 school year. He stated that this affected his ability to do the multi-faceted work because the office manager was supposed to do the duplicating for the teachers. Despite the confidential nature of that communication, Dr. Burke told Ms. Caruso about Buller's comments and she became indignant at what she perceived as a charge that she was unable to control her own clerical staff. Mr. Buller felt that he was within his rights as UTLA chapter chairperson to make those statements to Burke.

8. On June 15, 1983, at 8:05 a.m., after school was supposed to have started, and while students were still milling around the halls, Ms. Caruso called the teachers into the office. Mr. Edgington had asked some questions about just how specified entries should be made in the roll book. When the teachers went into the office, Ms. Caruso, in a loud voice said three things: "(1) I don't want to hear anything about the UTLA, (2) Don't bring the union into this, and (3) I have my own definitions of what democracy will be". There was no evidence proffered to explain why Ms. Caruso directed her remarks at UTLA in this matter.

This occurred in the last few days of the school year and the teachers were trying to clarify what they were to do with their roll books, etc. Mr. Buller felt that these statements were inappropriate for two reasons: (1) he felt it was an improper time and place for these types of statements when the students were milling about, and (2) he resented her trying to keep UTLA out of the operation of a school matter such as that.

9. On September 28, 1982, Mr. Buller and his fellow teachers were required to attend a meeting at Los Angeles High School, Continuing Education. They were supposed to be there at 1:00 p.m. The Jane Addams classes let out at noon, and the teachers had last-minute duties to complete. In effect, this meant that the teachers had no duty-free lunch. Mr. Buller did not file a grievance or otherwise make a fuss about losing

their duty-free lunch. He cited this circumstance as an example of his reasonableness.

10. On February 2, 1983, at a faculty meeting, Ms. Caruso set forth some very unreasonable multi-faceted contract requirements. Everyone of the teachers present said that it was impossible to get this multi-faceted work done by June 17. Mr. Buller cited this example to show that even though a lot of the items in his Notice of Unsatisfactory Performance dealt with his not being able to complete specified multi-faceted assignments, he was not the only one that thought these assignments were unreasonable.

11. On February 15, 1983, Ms. Caruso and Mr. Buller were discussing Mr. Buller's actions vis-a-vis a certain student. Mr. Buller became discouraged and said, "Well, what motivation do I have to continue working here or continue trying to do my best?" Ms. Caruso said, "Your salary". He took this as an implication of a threat to fire him. Two days later Ms. Caruso suspended this same student when Ms. Genson reported him doing a relatively mild thing, restroom loitering. Mr. Buller felt that this was an example of the disparate manner in which Ms. Genson was given administrative support and he was not.

12. On March 21, 1983, at a staff meeting Ms. Caruso stated, "We're going to have to keep accurate staff attendance (records)". Mr. Buller replied,

"Well, let's do that," because we'd been -

most of us had been signing in all along,
"and especially let's keep track of the
attendance of Yolie" (Yolanda Pina - the
office manager) who was absent so often.

13. August 10, 1982, during a meeting with Dr. Calvin Burke, Mr. Buller was told by Dr. Burke to let him know if Ms. Caruso told him to develop courses of curriculum. A number of times he did inform Dr. Burke that this had happened. Dr. Burke did nothing to prevent Buller from being punished for not developing curriculum courses for the multi-faceted contracts.

14. On May 4, 1983, at 2:10 p.m., Ms. Caruso began to try to question Mr. Buller in the presence of Daryl Malm. According to Mr. Buller, it is against the contract for two administrators to begin questioning a teacher regarding a possible disciplinary situation without the teacher having access to a witness. For some reason, Ms. Genson was not on campus. For some reason, Mr. Edgington had been sent by Ms. Caruso down to the Continuation Education Research Center in Van Nuys.

When she began asking questions that could potentially lead to discipline, he reminded her of the UTLA contract and she said, "It's always been this way between you and me". He felt that he was merely asserting contractual rights, saying that this situation should not exist, and she became extremely angry because he was doing it.

ISSUE

Did Charging Party prove that a nexus existed between his UTLA chapter chairmanship and the District's issuance of a Notice of Unsatisfactory Performance to him?

CONCLUSIONS OF LAW

The Test for Section 3543.5 (a) Violations

The Board, in Carlsbad Unified School District (1/30/79) PERB Decision No. 89, set forth a test for the disposition of charges alleging violations of section 3543.5 (a):

- (1) A single test shall be applicable in all instances in which violations of section 3543.5 (a) are alleged;
- (2) Where the charging party establishes that the employer's conduct tends to or does result in some harm to employee rights granted under the EERA, a prima facie case shall be deemed to exist;
- (3) Where the harm to the employees' rights is slight, and the employer offers justification based on operational necessity, the competing interest of the employer and the rights of the employees will be balanced and the charge resolved accordingly;
- (4) Where the harm is inherently destructive of employee rights, the employer's conduct will be excused only on proof that it was occasioned by circumstances beyond the employer's control and that no alternative course of action was available;
- (5) Irrespective of the foregoing, a charge will be sustained where it is shown that the employer would not have engaged in the complained-of conduct but for an unlawful motivation, purpose or intent. (Emphasis added.)

Proof of Unlawful Intent where Offered or Required

Unlawful motivation, purpose or interest is essentially a state of mind, a subjective condition generally known only to the charged party. Direct and affirmative proof is not always available or possible. However, following generally accepted legal principles, the presence of such unlawful motivation, purpose or intent may be established by inference from the entire record.²

In Novato Unified School District (4/30/82) PERB Decision No. 210, the Board clarified the Carlsbad test for retaliation or discrimination in light of the NLRB decision in Wright Line (1980) 251 NLRB 1083 [105 LRRM 1169]. In Novato, unlawful motive must be proven in order to find a violation.

Mr. Buller has an absolute right to participate in the activities of UTLA to whatever extent he chooses. To the extent that the District's issuance of a Notice of Unsatisfactory Performance and his subsequent transfer to Venice High School inhibited that participation it resulted in a harm to a right guaranteed by the Act.

However, the crucial question in this case is not whether the District's actions resulted in such a harm but rather, did the District issue the notice and transfer Mr. Buller because of such protected activities.

²Republic Aviation Corp. v. NLRB (1945) 324 U.S. 793 [16 LRRM 620]; see also Radio Officers Union v. NLRB (1954) 347 U.S. 17 [33 LRRM 2417].

Event numbers 1, 5, 6, 9, 11, 12 and 13, as related by Mr. Buller above, have no relevance at all to either discrimination or proof of the existence of the nexus necessary to prove the charge, or such proof was so slight as to be de minimus.

Event numbers 2, 3, and 10 related to circumstances which tend to support a conclusion that Mr. Buller was being treated somewhat differently than the nonunion member teacher at the school. However, there was no evidence in the recitation of these events that would support an inference that such disparate treatment was the result of an animus towards UTLA or Mr. Buller's UTLA chairmanship.

Event numbers 4, 7, 8 and 14 could be interpreted so as to provide evidence which relates to the attitude of the site administrator towards UTLA. However, the weight of such evidence is slight and insufficient to support an inference that the Notice of Unsatisfactory Performance was issued or that the transfer was effected due to Mr. Buller's protected activities.

Event No. 4 - Buller and Edgington, in writing, requested Caruso to provide them with specified written policies regarding their job duties. On the next day the district administrator in charge of over 40 district continuation schools came to the Jane Addams campus and told Buller and Edgington they were not doing a good job.

Mr. Buller's contention that Dr. Burke immediately rushed out to the Jane Addams Continuation High School in retaliation for the request for written policy determinations is not reasonable. There was no evidence proffered that the district reacted in any manner when Edgington's grievance was filed. Certainly a formal grievance is more serious and potentially challenging manifestation of union activity than a simple written request from two teachers.

On the same day a district staff instructional advisor came to the campus and had a meeting with Mr. Buller regarding his multi-faceted contracts. That meeting was scheduled for exactly the same time as a grievance hearing was scheduled. However, there were severe limitations on the times available to have such meetings. The teachers were required to teach four periods, from 8:00 a.m. to noon, each day. A duty-free lunch period was guaranteed by the collective bargaining agreement. The workday terminated at 2:50 p.m. There were fewer than two hours available to schedule any and all meetings in any given day. The fact that the instructional advisor's meeting overlapped the grievance meeting is not surprising under all of the circumstances and does not necessarily infer that the scheduler was trying to limit Mr. Buller's participation in the grievance meeting. Even if it does suggest a degree of union animus its weight is slight and insufficient to support an inference that the Notice of

Unsatisfactory Performance was issued as a result of such animus.

Event No. 7 - Mr. Buller blamed his inability to complete some of his assigned tasks on a classified co-worker. He transmitted this excuse to his supervisor's supervisor in what he assumed would be a confidential communication. His second level supervisor ignored the confidentiality of the communication and Buller's immediate supervisor negatively reacted to Mr. Buller's comments.

There was no evidence proffered that the immediate supervisor negatively reacted to the union activity but rather the reaction was directed more specifically towards a subordinate "going over her head" and suggesting that she was unable to control her own clerical staff. The direction of Mr. Buller's complaint regarding the classified employee seemed to be in the nature of defense to complaints against him rather than a more traditional general defense of employee rights, which may have been the reason for Dr. Burke's disregard of the confidentiality of the communication.

Once again this event may suggest a degree of union animus but its weight is slight and insufficient to support an inference that the District's actions were the result of such animus.

Event No. 8 - Mr. Buller is probably justified in taking exception to Ms. Caruso's statements regarding the union not

being brought into the roll book entry dispute. However, an isolated outburst by a school administrator during the pressure packed year-ending school days, absent some other connective circumstances, is insufficient to support an inference that the subject notice and transfer were the result of retaliation for protected activities.

Event No. 14 - Mr. Buller testified that he told Ms. Caruso that she could not discuss matters that could potentially lead to discipline unless he had an opportunity to have a witness or representative present. There is no evidence that she ignored his comments and continued to discuss such matters. His only complaint seems to be that she said, "It's always been this way between you and me," which would lead one to believe that she was not pleased with Mr. Buller's assertion of his contractual rights in this matter. To the extent that such displeasure manifests a frustration with the limitations on District action(s) set forth in the contract and therefore a degree of union animus, it supports Mr. Buller's case. However, as in the analysis of the three other events, supra, the weight given such degree of animus is slight and is insufficient to support an inference the District's actions were a result of such animus.

Mr. Buller entered into evidence a personal journal, 37 pages in length, of the activities at his school. This journal sets forth the comings and goings of all employees and sets forth a detailed recitation of all events and visitors on

campus for the 1982-83 school year. It has very narrow margins and, is single spaced and is, at the very least, an exhaustive chronicle of the events on the campus during that school year. Mr. Buller had sufficient time and, due to the journal, sufficient resources available, to set forth at the hearing, any and all evidence supporting his case. He was able to provide only the two or three isolated incidents of the site administrator's displeasure with his union-related behavior in specific circumstances. The District issued its Notice of Unsatisfactory Performance based on 51 separate incidents which, it alleged, constituted unsatisfactory performance. Most of these incidents dealt with Mr. Buller's conduct regarding the conversion of his student educational contracts to the multi-faceted format. The isolated incidents regarding his union-related behavior do not provide sufficient evidence to support an inference that the district issued such a notice and transferred Mr. Buller to Venice High School because of such union-related activity and not because of his behavior regarding the multi-faceted contract. Nor did the evidence support a conclusion that the notice would not have been issued, nor the transfer have been effected, but for Mr. Buller's protected activities.

CONCLUSION

For all of the foregoing reasons and based on the record as a whole, it is determined that there was no nexus established

between Mr. Buller's protested activities, i.e., UTLA chapter chairmanship and the Notice of Unsatisfactory Performance or the disciplinary transfer given to him. As there was no nexus proven there can be no violation of section 3543.5 (a) of the Act. As there is no violation the charge and Complaint must be DISMISSED.

PROPOSED ORDER

Under all of the foregoing reasons and the entire record contained herein, the entire unfair practice charge and complaint issued against the Los Angeles Unified School District is DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 3 2305, this Proposed Decision and Order shall become final on January 22, 1985, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code, title 8, part III, section 3 2300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board itself at the headquarters office in Sacramento before the close of business (5:00 p.m.) on January 22, 1985, or sent by telegraph or certified United States mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative

Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, section 32300 and 32305..

Dated: December 31, 1984

Alién R. Link
Administrative Law Judge